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BY HAND AND ELECTRONIC MAIL

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: D.T.E. 03-60

Dear Secretary Cottrell:

On August 23, 2004, by procedural memorandum from Assistant General Counsel Paula Foley and Hearing Officer Jesse Reyes, the Department requested that "the parties to D.T.E. 03-60 attempt to reach consensus on the factual information assembled as part of the Department's D.T.E. 03-60 proceeding to be forwarded to the FCC." The Department asked that "the parties . . . confer with one another and provide the Department with a joint statement proposing the summary or summaries of the data to be submitted to the FCC" and to provide their joint statement by September 13, 2004.

On September 7, 2004, Verizon submitted a letter to Ms. Foley, stating that it had no interest in assisting the Department in its effort to compile a useful summary of the record for the FCC's consideration. Apparently concerned that the hard facts in the record of this case resulting from the participation of all parties demonstrate impairment, Verizon prefers to present a one-sided, self-serving view to the FCC, once again demonstrating Verizon's penchant for unilateral action in a single-minded pursuit of its own self-interest.

I am writing this letter to advise the Department that several CLECs have conferred and that at least some of the conferring CLECs wish to assist the Department in its efforts to compile a fair summary of the record in this case that may be used by the FCC to make impairment/non-impairment determinations.[1] Each CLEC is still reviewing

[1] Last week I conferred with Richard Fipphen, representing MCI; Steve Augustino, representing Broadview Networks, Choice One Communications of Massachusetts, Covad Communications Company and XO Massachusetts; and Phil Macres, representing RCN-BecoCom, LLC, Lightship Telecom, LLC, and DSLnet Communications, LLC. I also conferred separately with Greg Kennan, representing Conversent Communications. As of today, MCI has indicated that it will take a different position and file a letter

the extent to which it is able to devote resources to our joint effort. As a result, this letter indicates only our preliminary discussion and does not commit any CLEC, including AT&T, to a particular plan.

Our discussions have so far focused only on the loops and transport portion of the case. We are considering the possibility of developing a data base of the routes for transport and the building locations for loops as to which Verizon claims non-impairment. With respect to routes, as to each CLEC for each route that Verizon has identified as a trigger candidate, the CLEC would be marked with a code that identifies the reason or reasons that it should not be counted as a trigger candidate on that route or for that building, if any. For example, on route "A" identified by Verizon, there may be evidence that CLEC "1" identified by Verizon as a trigger candidate does not qualify because the fiber facilities running along that route are not terminated in the collocation facilities at both ends and are used instead as entrance facilities or extended loops. A code for such reason would be placed on that CLEC for that route. Similarly, there may be evidence that CLEC "2" on that route (or any other) does not qualify because the CLEC does not have dedicated transport between the two collocation facilities at the DS3 (or lower) level, as required by the FCC's rules. A code representing that reason would be placed on that CLEC for that route (and any other route for which that reason disqualifies that CLEC). Finally, it should be noted that there may be an absence of evidence regarding such matters. Therefore, for each reason that a CLEC may be disqualified, there should be two codes: one for when there is affirmative evidence to that effect and another for when Verizon has failed to meet its burden of proving that such reasons do not apply and that the CLEC in question is actually providing dedicated transport that satisfies the FCC rules on the route in question.

A similar database could be developed for loops on a building-by-building basis. For example, for building "A" identified by Verizon, there may be evidence that CLEC "1" identified by Verizon as a trigger candidate does not qualify because it does not have access to the entire building. A code for such reason would be placed on that CLEC for that building. Similarly, there may be evidence that CLEC "2" does not qualify because the facilities of that CLEC running to that building have bandwidth greater than two DS3's worth of capacity. A code representing that reason would be placed on that CLEC for that building (and any other building for which that reason disqualifies that CLEC). As in the case of loops, a second code for each reason would be required to reflect the absence of affirmative proof from Verizon showing that, for example, the CLEC does have access to the entire building and/or does have loop facilities with bandwidth at or below the two DS3 level.

By constructing a data base in this way, it will be possible for the FCC to make decisions regarding criteria and standard of proof is required to conclude that dedicated transport is being offered on any given route sufficient to demonstrate non-impairment.

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separately on this issue. Broadview, Covad and XO are tentatively supportive of the proposal in this letter but remain concerned about resources. I have not heard further from the remaining carriers with which I conferred last week.

The FCC will be free to define its criteria and standard of proof and obtain an immediate answer as to which routes or buildings satisfy the non-impairment criteria. Ideally, the database would be provided to the FCC in a form that can be manipulated. If CLEC names were replaced by anonymous codes, then no confidential information would be released. Alternatively, "reports" could be produced from the data base by the Department based on several alternative criteria and standards of proof showing the routes for which non-impairment would result based on such criteria and standard of proof.

In order to accomplish the work within the time required, we would need individuals from each party and the Department who could assume responsibility for doing part of the work of reviewing the record to find the evidence for each CLEC and route or building. In addition, we would need one of the parties, or the Department, to contribute the technical expertise and computer resources necessary to set up the database in a fashion in which it can be manipulated.

The effort I have described above will require regular and informal contact among the CLECs and between the CLECs and the Department. It cannot be accomplished through formal filings within the short time frame required. In any event, formal filings are not necessary. The Department is no longer responsible for making a decision on the issues of impairment under the Telecommunications Act of 1996,[2] so the *ex parte* rules no longer apply, as in the case of the Department's investigation into Verizon's Section 271 compliance in D.T.E. 99-271. Moreover, Verizon has unilaterally withdrawn itself from this effort. As a result, we propose that henceforth the CLECs and the Department begin the process of developing the record summary with regular telephone, e-mail and personal contact.

Thank you very much.

Respectfully submitted,

Jay E. Gruber

cc: Service List

[2] As AT&T and other CLECs have repeatedly argued, and as many other state commissions have found, state commissions retain the power to order unbundling under the authority of state law and the Bell Atlantic/GTE merger order.